

1 SB35  
2 208749-1  
3 By Senator Albritton  
4 RFD: Finance and Taxation General Fund  
5 First Read: 02-FEB-21  
6 PFD: 01/07/2021

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8       SYNOPSIS:               Under the Alabama Uniform Trust Decanting  
9                               Act, after giving statutorily required notice to  
10                              certain persons, an authorized fiduciary of a trust  
11                              may exercise decanting power without the consent of  
12                              any person and without court approval under certain  
13                              conditions. A person entitled to notice or a  
14                              beneficiary of the trust may challenge the exercise  
15                              of the decanting power by the authorized fiduciary  
16                              if the challenge is commenced within six months  
17                              from the date notice is given and it is alleged  
18                              that the proposed or attempted exercise of the  
19                              decanting power did not comply with the law or was  
20                              an abuse of the authorized fiduciary's discretion  
21                              or a breach of fiduciary duty.

22                              Also under existing law, failure to receive  
23                              notice as required does not extend the notice  
24                              period if the authorized fiduciary acted with  
25                              reasonable diligence to comply with the legal  
26                              requirements of the Uniform Trust Decanting Act.

1                   This bill would clarify that failure to  
2                   receive notice of the exercise of the decanting  
3                   power by the authorized fiduciary does not extend  
4                   the requirement to commence a challenge within six  
5                   months if the authorized fiduciary acted with  
6                   reasonable diligence to comply with the  
7                   requirements of the act.

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9                   A BILL  
10                   TO BE ENTITLED  
11                   AN ACT

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13                   Relating to the Alabama Uniform Trust Decanting Act;  
14                   to amend Sections 19-3D-7 and 19-3D-9, Code of Alabama 1975,  
15                   to provide further for the failure to receive notice.

16                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17                   Section 1. Sections 19-3D-7 and 19-3D-9, Code of  
18                   Alabama 1975, are amended to read as follows:

19                   "§19-3D-7.

20                   "(a) In this section, a notice period begins on the  
21                   day notice is given under subsection (c) and ends 59 days  
22                   after the day notice is given.

23                   "(b) Except as otherwise provided in this chapter,  
24                   an authorized fiduciary may exercise the decanting power  
25                   without the consent of any person and without court approval.

26                   "(c) Except as otherwise provided in subsection (f),  
27                   an authorized fiduciary shall not exercise the decanting power

1 prior to 60 days after giving ~~record~~ notice in a record of the  
2 intended exercise of the decanting power to:

3 "(1) each settlor of the first trust, if living or  
4 then in existence;

5 "(2) each qualified beneficiary of the first trust;

6 "(3) each holder of a presently exercisable power of  
7 appointment over any part or all of the first trust;

8 "(4) each person that currently has the right to  
9 remove or replace the authorized fiduciary;

10 "(5) each other fiduciary of the first trust;

11 "(6) each fiduciary of the second trust; and

12 "(7) the Attorney General, if Section 19-3D-14(b)  
13 applies.

14 "(d) An authorized fiduciary may give notice under  
15 subsection (c) to a qualified beneficiary who is a minor or  
16 incapacitated individual by giving notice to such individual's  
17 representative. An authorized fiduciary is not required to  
18 give notice under subsection (c) to a person that is not known  
19 to the fiduciary or is known to the fiduciary but cannot be  
20 located by the fiduciary after reasonable diligence.

21 "(e) A notice under subsection (c) must:

22 "(1) specify the manner in which the authorized  
23 fiduciary intends to exercise the decanting power;

24 "(2) specify the proposed effective date for  
25 exercise of the power;

26 "(3) include a copy of the first-trust instrument;

27 "(4) include a copy of all second-trust instruments;

1           "(5) include a statement indicating the capacity in  
2 which the intended recipient is being given notice; and

3           "(6) include a statement that any application under  
4 Section 19-3D-9 must be filed within six months from the day  
5 notice is given.

6           "(f) The decanting power may be exercised before  
7 expiration of the notice period under subsection (a) if all  
8 persons entitled to receive notice waive the period in a  
9 signed record.

10           "(g) The receipt of notice, waiver of the notice  
11 period, or expiration of the notice period does not affect the  
12 right of a person to file an application under Section  
13 19-3D-9.

14           "(h) An exercise of the decanting power is not  
15 ineffective because of the failure to give notice to one or  
16 more persons under subsection (c) if the authorized fiduciary  
17 acted with reasonable care to comply with subsection (c).

18           "§19-3D-9.

19           "(a) On application of an authorized fiduciary, a  
20 person entitled to notice under Section 19-3D-7(c), a  
21 beneficiary, or with respect to a charitable interest that is  
22 not entirely held by or for the benefit of one or more  
23 identified and existing charitable organizations, the Attorney  
24 General or other person that has standing to enforce the  
25 charitable interest, the court may:

26           "(1) provide instructions to the authorized  
27 fiduciary regarding whether a proposed exercise of the

1 decanting power is permitted under this chapter and consistent  
2 with the fiduciary duties of the authorized fiduciary;

3 "(2) appoint a special fiduciary and authorize the  
4 special fiduciary to determine whether the decanting power  
5 should be exercised under this chapter and to exercise the  
6 decanting power;

7 "(3) approve an exercise of the decanting power;

8 "(4) subject to the limitations set forth in  
9 subsection (c), determine that a proposed or attempted  
10 exercise of the decanting power is ineffective because:

11 "(A) after applying Section 19-3D-22, the proposed  
12 or attempted exercise does not or did not comply with this  
13 chapter; or

14 "(B) the proposed or attempted exercise would be or  
15 was an abuse of the fiduciary's discretion or a breach of  
16 fiduciary duty;

17 "(5) determine the extent to which Section 19-3D-22  
18 applies to a prior exercise of the decanting power;

19 "(6) provide instructions to the trustee regarding  
20 the application of Section 19-3D-22 to a prior exercise of the  
21 decanting power; or

22 "(7) order other relief to carry out the purposes of  
23 this chapter.

24 "(b) On application of an authorized fiduciary, the  
25 court may approve:

26 "(1) an increase in the fiduciary's compensation  
27 under Section 19-3D-16; or

1                   "(2) a modification under Section 19-3D-18 of a  
2 provision granting a person the right to remove or replace the  
3 fiduciary.

4                   "(c) A proceeding under subsection (a)(4) may not be  
5 commenced by a person entitled to notice under Section  
6 19-3D-7(c), or by a beneficiary, unless such proceeding is  
7 commenced within six months from the day notice is given under  
8 Section 19-3D-7(a). Failure to receive notice shall not extend  
9 the ~~notice period~~ time by which such proceeding must be  
10 commenced if the authorized fiduciary acted with reasonable  
11 diligence to comply with the requirements of Section  
12 19-3D-7(c)."

13                   Section 2. This act shall become effective on the  
14 first day of the third month following its passage and  
15 approval by the Governor, or its otherwise becoming law.